

N.D.A.G. Letter to Whitman (March 20, 1990)

March 20, 1990

Mr. Charles C. Whitman
Bismarck City Attorney
P.O. Box 5503
Bismarck, ND 58502

Dear Mr. Whitman:

Thank you for your March 8, 1990, letter concerning a proposal to implement a tax levy to provide for a city job development authority pursuant to N.D.C.C. §§ 40-57.4-04 and 57-15-10(28). According to your letter, the Bismarck City Commission has raised a constitutional question concerning the propriety of tax moneys being used from this levy for the purposes of providing for a city job development authority or to contract with an existing industrial development organization to function as a job development authority.

N.D. Const. art. X, § 18, is the constitutional provision which has been raised in this matter. As noted in my May 11, 1988, letter to acting city attorney Paul Fraase, that constitutional provision prohibits a city from making loans or giving credit or making donations to or in aid of individuals, associations, or corporations unless such activity occurs in connection with a city's engaging in a permissible industry, business, or enterprise as authorized by the Legislature. Patterson v. City of Bismarck, 212 N.W.2d 374 (N.D. 1973). So long as a city is engaging in a permissible activity as authorized by the Legislature, the provisions of N.D. Const. art. X, § 18, are inapplicable.

N.D.C.C. § 40-57.4-04 authorizes a city to levy a tax to establish a city job development authority fund or to fund an active industrial development organization. The amount of tax levies for these purposes is limited to four mills. N.D.C.C. § 57-15-10(28). Thus, so long as the city is exercising its authority given to it by these statutes, the provisions of N.D. Const. art. X, § 18, are inapplicable.

I have reviewed your February 23, 1990, memo to City Commissioner Walker. I am in agreement with your conclusion that my letter opinion of May 11, 1988, answers the question presented. The tax levy as authorized by N.D.C.C. §§ 40-57.4-04 and 57-15-10(28) does not violate the provisions of N.D. Const. art. X, § 18.

Sincerely,

Nicholas J. Spaeth

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